

MODEL DRAFT FOR WRITTEN STATEMENT

IN THE COURT OF SHRI CIVIL JUDGE
(DISTRICT _____), DELHI
SUIT NO.OF 2017

X _____ PLAINTIFF
VERSUS

Y _____ DEFENDANT

WRITTEN STATEMENT OF BEHALF OF THE DEFENDANT

MOST RESPECTFULLY SHOWETH:

PRELIMINARY OBJECTIONS :

1. That the suit is barred by limitation under Article of the Limitation Act and is liable to be dismissed on this short ground alone.
2. That this Hon'ble Court has no jurisdiction to entertain and try this suit because.....
3. That the suit has not been properly valued for the purpose of court fees and jurisdiction and is therefore liable to be rejected outrightly.
4. That there is absolutely no cause of action in favour of the Plaintiff and against the Defendant. The suit is therefore liable to be rejected on this ground also.
5. That the suit is bad for non-joinder of necessary parties, namely
6. That the suit is bad for mis-joinder of Z.
7. That the suit is barred by the decree dated passed in suit No..... titled Y Versus X by Sh., Sub-Judge, Delhi, The present suit is therefore barred by the principle of res-judicata and therefore liable to be dismissed on this short ground alone.
8. That the suit is liable to be stayed as a previously instituted suit between the parties bearing No..... is pending in the Court of Sh., Sub-Judge, Delhi
9. That the suit has not been properly verified in accordance with law.
10. That the Plaintiff's suit for permanent injunction is barred by Section 41 (h) of the Specific Relief Act since a more efficacious remedy is available to the Plaintiff. The Plaintiff has alleged breach of contract by the Defendant. Assuming, though not admitting, that the Defendant has committed any alleged breach, the remedy available to the Plaintiff is by way of the suit for specific performance and not suit for specific performance.

11. That the Plaintiff's suit for permanent injunction is also barred by Section 41 (i) of the Specific Relief Act because he has not approached this Hon'ble Court with clean hands and his conduct has been most unfair, dishonest and tainted with illegality.

12. That the Plaintiff's suit for declaration is barred by Section 34 of the Special Relief Act as the plaintiff has omitted to claim further consequential relief available to him.

13. That the suit is barred by Section 14 of the Specific Relief Act as the contract of personal service cannot be enforced.

14. That the suit is liable to be dismissed outrightly as the Plaintiff has not given the mandatory notice under Section 80 of the Code of Civil Procedure/Section 14 (1) (a) Rent Control Act/Section 478 of the Delhi Municipal Corporation Act.

15. That the suit is liable to be dismissed as the Plaintiff firm is not registered under Section 69 of the Indian Partnership Act and as such is not competent to institute this suit.

16. That the present suit is barred by Section 4 of the Benami Transaction (Prohibition) Act, 1988, and is therefore liable to be dismissed outrightly.

ON MERITS :

Without prejudice to the preliminary objections stated above, the reply on merits, which is without prejudice to one another, is as under:-

1. That para 1 of the plaint is correct and is admitted.

2. That the contents of para 2 of the plaint are denied for want of knowledge. The Plaintiff is put to the strict proof of each and every allegation made in the para under reply.

3. That the contents of para 3 of the plaint are absolutely incorrect and are denied. It is specifically denied that the Plaintiff is the owner of the suit properly. As a matter of fact, Mr. N is the owner of the suit properly.

4. That with respect to para 4 of the plaint, it is correct that the Defendant is in possession of the suit properly. However, the remaining contents of para under reply are absolutely incorrect and are denied. It is specifically denied that.....

5-10. (Each and every allegation must be replied specifically depending upon the facts of each case. The above reply on merits is therefore only illustrative in nature.)

11. That para 11 of the plaint is incorrect and is denied. There is no cause of action in favour of the Plaintiff and against the Defendant because..... The plaintiff is therefore liable to be rejected outrightly.

12. That para 21 is not admitted. This Hon'ble Court has no jurisdiction to entertain this suit because the subject matter of this suit exceed the pecuniary jurisdiction of this Hon'ble Court.

13. The para 13 is not admitted. The suit has not been properly valued for the purpose of court fee and jurisdiction. According to the Defendant the correct valuation of the suit is Rs.....

PRAYER:

It is, therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Dismiss the suit of the plaintiff.
- b) Award costs to the defendant.
- c) Pass any other just and equitable order as deemed fit in the interest of justice.

Delhi

THROUGH

Dated

DEFENDANT

ADVOCATE

VERIFICATION :

Verification at Delhi on ... day..... of , 20... that the contents of paras 1 to Of the preliminary objection and para...to... of reply on merits are true to my personal knowledge and those of paras ... toof preliminary objection and para...to... of reply on merits are true & correct on the basis of legal advice received and belived to be true. Last para is prayer to the Hon'ble Court.

DEFENDANT

[NOTE : Counter Claim, Set off can be joined in the Written Statement and the same may be verified and supported by affidavit]

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CAVEAT NO. /2017

(ARISING OUT OF THE JUDGMENT AND ORDER DATED IN SUIT NO. TITLED AS ABC v. XYZ PASSED BY SH. _____, CIVIL JUDGE, _____ DISTRICT, DELHI)

In the matter of:

XYZ

S/o

R/o

. . Petitioner

Versus

ABC

S/o

R/o

. . Respondent/Caveator

CAVEAT UNDER SECTION 148-A OF C.P.C.
PROCEDURE BY RESPONDENT/CAVEATOR.

Most respectfully Showeth:

- a) That Sh. _____, Civil Judge, _____ District, Delhi has passed order against appellants in Civil Suit No. titled as ABC v. XYZ on, whereby application for amendment U/O VI Rule 17 CPC filed by plaintiff/would be petitioner, was dismissed.
2. That the caveator is expecting that the plaintiff/would-be petitioner may file a Civil Misc. (Main) Petition under Article 227 of Constitution of India against said order in this Hon'ble Court as such this caveat is being filed.
3. That the caveator has a right to appear and contest the Civil Misc. (Main) Petition if preferred by the plaintiff/would-be petitioner.
4. That the caveator desires that he may be given the notice of the filling of the Civil Misc. (Main) Petition as and when the same is filed by the plaintiff/would-be petitioner, to enable caveator to appear at the time of hearing for admission and no stay may be granted without hearing the caveator/respondent.
5. That a copy of this caveat has been sent by Regd. A/D post to the plaintiff/would be Petitioner.

It is, therefore, most respectfully prayed that nothing may be done in Civil Misc. that may be filed by the petitioner without notice to the caveator or his counsel.

Caveator

Delhi

Through

Dated:

Advocate

(Note: An affidavit of the caveator, duly attested by oath commissioner, in support of this application is to be attached with to this application.)

Sec 25 of CPC 1908 states that on an application made by a party and after notice to the parties and after hearing them the Supreme Court may at any stage if satisfied that such an order is needed in the interest of justice may under this section order that any suit, appeal or any other proceeding be transferred from a High Court or other civil court in one state to High Court or other civil court in another state.

**IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION
TRANSFER PETITION (CIVIL) NO. _____ OF 2017**

(UNDER SECTION 25 OF THE CODE OF CIVIL PROCEDURE, READ WITH
ORDER XXXVI, SUPREME COURT RULES.)

IN THE MATTER OF:

J _____ S/o _____ R/O _____ ... PETITIONER

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Defence,
South Block, New Delhi-110001
2. Chief of Air Staff,
Vayu Bhawan,
New Delhi-110001.
3. Air Officer Commanding –in-Chief
Western Air Command,
Subrato Park, New Delhi-110010
4. Group Captan A _____
Station Commander, Air Force
Station Suratgarh.
5. Presiding Officer
Court Martial, Subrato Park, New Delhi.

... RESPONDENTS

AND IN THE MATTER OF:

TRANSFER OF CIVIL WRIT PETITION NO.727/2015 FILED BY
THE PETITIONER AGAINST THE RESPONDENTS PENDING
IN THE HIGH COURT OF DELHI AT NEW DELHI, TO THE
HIGH COURT OF JUDICATURE AT ALLAHABAD.

To

The Hon'ble Chief Justice of India, And his Companion Justices of the Hon'ble
Supreme Court of India at New Delhi

The above named petitioner most
respectfully, showeth as under:

MOST RESPECTFULLY SHOWETH

1. That the petitioner is seeking Transfer of Civil Writ Petition No.727/2015 filed by the Petitioner against the respondents pending in the High Court of Delhi at New Delhi, to the High Court of Judicature of Allahabad, titled "JWO BP Misra Versus Union of India & Ors."

2. BRIEF FACTS:

i. The Petitioner joined as Airmen in the Trade Flight Mechanic Air Frame and later after conversion course became Air Frame Fitter after passing the necessary examination and training. During the period petitioner also gained a promotion to the rank of Corporal, Sergeant and later Junior Warrant Officer – Class-II, a Gazetted post. The Petitioner was also awarded three good conduct badge Pay each after 4 year of Services for very good character and good proficiency in his trade. There was no whisper of any kind of misconduct while working at various places during 22 year of service as per the directions of the Respondents. The same is a matter of record and speaks in volumes about the Character and Trade proficiency of the petitioner.

ii. The Petitioner got his last rank after passing due examination and consideration of last Annual Confidential Report (ACRS) Significantly in the year 1998 the Petitioner was awarded in assessment 94 / 100 as exceptional which speaks about the high caliber of the Petitioner in his trade.

iii. The Petitioner was compelled to file a Redress of Grievances ROG against Respondent No.6 for non grant of leave and unwanted harassment in many ways i.e. sending on temporary duty assigning Secondary Duties, not granting of leave and denial of even monthly salary for four months which is a matter of record. The Petitioner has one son suffering with asthmatic problem and came on posting to present place as per the Medical advice of the authorities.

iv. The Petitioner was charge sheeted and later the same was dropped as he has complained about the grievances against his Squadron Technical Officer (STO) for illegal harassment.

v. The petitioner has to face the wrath of his previous Commanding Officer (C.O.) and Squadron Technical Officer (S.T.O.) by means of various methods of harassment which even adversely affected the health of his one son and even wife was got effected by Tuberculosis. The harassment of the respondents did not end there and hence continued which compelled the Petitioner to file a application for interview with the Station Commander but all in vain.

vi. The Petitioner applied for further extension of service after fulfilling all the conditions. The Petitioner was compelled to raise redressal of Grievances ROG against the

Respondent No.6 Commanding Officer Wg. Cmr. Raj Shekhar. This further aggravated the attitude of the Commanding Officer and Squadron Technical Officer (STO).

vii. The petitioner has all the apprehensions of his life as such filed a FIR at the Police Station for seeking protection from the officials of the Respondents. The Security Officer of the Respondents gave undertaking before the Police on behalf of Respondents that no harm will be done to the Petitioner. After withdrawing the Complaint by the Petitioner, the Petitioner was immediately sent on temporary duty to Nalia in Gujarat due to irritation of complaint. The Petitioner had no alternative but to proceed as directed without being his turn. The harassment of the Petitioner continued at the behest of the Respondent No.6 Commanding Officer C.O. and his Subordinates. After strong and heavy earth quake in whole of the Gujarat in the morning the Petitioner was directed to go back to his Unit knowing fully well of non-availability of transport which was totally abandoned due to the earth quake, the same is matter of record. However the Petitioner has to beg for his food and somehow reached his unit to avoid wrath of the Respondents by way of disciplinary action for misconduct of not disobedience.

viii. The Petitioner aggrieved by such highhandedness of the Respondents filed an Appeal under 26 of Air Force Act for redressal of his grievances. The Petitioner gave a reminder for disposal of his appeal under Section 26 of the Air Force Act. The Appeal was rejected without speaking order with stereo type of order devoid of merits. The Petitioner filed application for permission to file Civil Case and for grant of leave. The same was not granted by the Respondents and even denied the acknowledgment of the receipt. Application for extension of service was rejected and ordered to be discharged.

ix. The Petitioner was posted out to Nalia with effect from 25.6.2014 at the behest of Respondents 5 and 6 knowing fully well that Petitioner is likely to be discharged from service with effect from May, 2015 and he is not to be disturbed in his last days of service as per the custom and usage of service.

x. The Petitioner applied for cancellation of his posting as Nalia is a wet place and sons is suffering from Asthma besides there is no education facilities beyond Class-XII which would effect the career and studies of the Children of the Petitioner. It is also a matter of record that Petitioner's wife is suffering from Tuberculosis and is under the treatment of the Respondent's Medical authorities. The Petitioner's application was not even forwarded in time to the higher authorities.

xi. The Petitioner applied for leave but was not granted. The Petitioner was directed to clear the unit by way of clearance certificate and proceed on posting without disposal of leave application under Escort forcibly. There was direct threat from Commanding Officer C.O. and no assistance was provided by Police.

xii. The Petitioner again was under threat of his posting under escort and danger to his life at the hands of the Respondents. The Petitioner feeling apprehension of danger to his life as such came to Delhi to see higher authorities but all in vain. As such decided to file a Writ Petition before this Hon'ble Court. As similarly one Sgt Pathak of 737 SU was killed in mysterious circumstances, petitioner has apprehension of raising Mental checking Form P-10 making/declaring a mental case. The Petitioner filed a Writ Petition for cancellation of his transfer posting. The Hon'ble Vacation Judge directed to produce the transfer policy and

adjourned the matter to 2.7.2014. On 2.7.2014, the Petitioner failed to procure the policy as such the matter was again adjourned to 4.7.2001. On 4.7.2014 the matter was again adjourned to 13.8.2014 as even the Respondents Lawyer failed to produce the transfer policy of the Respondent just to avoid the wrath of the Hon'ble Court.

xiii. The Petitioner being relieved of his fear due to the interference of the Court, joined his duty at the then place of posting and informed and prayed for regularization of the leave. The Petitioner was charge sheeted for 'Absent without leave' (AWOL) and disobedience order by not going on posting as directed to Nalia.

xiv. The charge sheet tried by Commanding Officer C.O. without jurisdiction in a discourteous manner asking the Petitioner to remove his Cap and Belt like Non-Commissioned Officer ignoring willfully the status and rank of the Petitioner who is junior warrant officer-Class-II Post, for which no such procedure is prescribed. The Ist Summary of evidence was ordered without application of Rule 24 of A.F. Rules, 1969 which prescribes principles of natural justice. The Petitioner prayed for loan from his Air force Public Provident (AFPP) fund to meet the legal expenses and the same was denied by the Respondents and the same is a matter of record.

xv. The Petitioner's posting was cancelled to avoid the wrath of this Hon'ble Court. Accordingly Writ Petition No.3978/2014 was allowed by this Hon'ble Court, however, without specifying the date of absence, Respondents got orders for disciplinary action against Petitioner. It is worth while to note that petitioner also come to Delhi to avoid death threat of Respondent No.4 and 6.

xvi. All Application under Section 26 of the Air Force Act, was rejected by Chief of Air Staff, Respondent No.2 without speaking order again in Stereo Type order devoid of merits, hence rejected. This is usual order in all such appeals u/s. 26 of Air Force Act, 1950 is matter of record. The Respondents themselves admitted the illegalities in the record of summary of evidence is also a matter of Record. The Petitioner again filed Appeal under Section 26 of the Air Force Act for redressal of his grievances as prescribed under the Act. The Petitioner was orally threatened to abstain from raising such applications.

xvii. The Petitioner was put under Close arrest without informing his family as even directed by the Hon'ble Supreme Court in D.K. Basu's case, which curtails the liberty of the Petitioner in a illegal manner. The reasons are yet to be known. The Petitioner sought interview with the Station Commander which was granted later on 9.10.2001. The Station Commander instead of redressing of the grievance and consoling the Petitioner for his illegal close arrest, further threatened the Petitioner with a dire consequence and of further putting him under close arrest and threatened for Court Martial.

xviii. The Petitioners Summary of Evidence 2nd is completed in any illegal manner without providing him a copy of the previous Summary of Evidence which is mandatory to meet the requirements of principles of Natural Justice. The petitioner is now informed that he is likely to Court martialled by way of GCM. and since last 4 months the Petitioner is under constant threat of disciplinary action at the hands of the Respondents for no fault of his where as all officials under the Respondents have joined hands together to harass the Petitioner by all means and make example case for others. The Petitioners extension application is also rejected as the last Respondent has spoiled his ACR for the year 2003 and 2005 without any

communication to the Petitioner or in a Counseling to the Petitioner as provided under the provisions of the Air Force Act. Hence Writ Petition No.727 of 2015 filed for initiation of appropriate enquiry and disciplinary action against the officials for illegal harassment of the Petitioner and for quashing of the ACRs 2003 & 2005 and subsequent order of discharge.

xix. Petitioner filed C.W.P. No. 6989 of 2014. In spite of several directions of the Hon'ble Court, the Respondent did not file the Counter – Affidavit in time and the same is now fixed for 11.2.2015. Respondents decided to conduct General Court Martial in retaliation to certain observations and queries by this Hon'ble Court to explain the reason of close arrest in September, 2014. That no legal aid or defence Advocate was provided. All members were ignorant about law and worked at the tune of the Judge Advocate and all pleas of petitioner were disallowed in arbitrary manner. Preliminary objections were not taken by General Court Martial on record. The Petitioner approached Hon'ble High Court of Delhi by way of Civil Misc. Application in which notice was issued. General Court Martial without adhering to law and provisions and principles of natural justice passed the order, "to be reduced to the rank of Cpl. From JWO (JCO) subject to confirmation." The copy of the order was not given to the Petitioner to deprive him to approach this Hon'ble Court. The Petitioner was released from open arrest which speaks in volumes about the high-handedness of the Respondents to deprive him of any legal aid or counseling by any one. Proceeding copy of General Court Martial were denied to the Petitioner by which denied the statutory right of Appeal u/s 161 (1) of Air Force Act. Even affidavit of defence witness was not taken on record. The Court orders dated 4.7.2014 and 13.8.2014 were not taken on record by the General Court Martial which were passed for illegal posting which actuated the absence of the Petitioner.

xx. The Petitioner was discharged. Pension stopped Regular threat to life is given as numerous incidents of elimination of Airmen who raise voice against commissioned officers. The Petitioner is in bad financial state and has no money to meet his day to day expenses. The petitioner has no means to incur heavy expenditure in travelling to Delhi for conduct of his case. The petitioner also feels that his life will be put to an end by the respondents. Fearing safety of his life the petitioner has moved his family bag and baggage to District Pratap Garh (U.P.). That the High Court of judicature at Allahabad are near to the place of residence of the petitioner and the petitioner feels that the writ Petition No. 727 of 2015 titled B.P. Mishra V/s U.O.I. be transferred to the High Court of Judicature at Allahabad as the petitioner has no trust and faith in the respondent and they can stoop to any level and the petitioner fears for his life. Hence the petitioner is seeking transfer of his case to the High Court at Allahabad.

3. This Transfer Petition is being filed by the Petitioner for transferring the Civil Writ Petition No.727/2015 filed by the Petitioner at the High Court of Delhi at New Delhi on amongst others the following grounds.

GROUND

I. Because the Petitioners have no trust and faith in the respondents as they are prejudiced and using influence and every other illegal method to defeat the petitioner. Thus the petitioner is seeking the transfer of the case from the High Court of Delhi at New Delhi to High Court of Judicature at Allahabad.

II. Because the petitioner have no trust and faith in Opposite party as they had in past acted with malice and making life threatening attempts and petitioner fears for his and of his family's life.

III. Because the petitioner is discharged from service and is not getting Pension and dues and petitioner is reduced in state of penury and is not in a position to conduct case in Delhi.

IV. Because on 31.5.2015 the Petitioner was discharged. His pension stopped and he received regular threat to life is given as numerous incidents of elimination of Airmen who raise voice against commissioned officers.

V. Because the Petitioner is in bad financial state and has no money to meet his day to day expenses. The petitioner has no means to incur heavy expenditure in travelling to Delhi for conduct of his case. The petitioner also feels that his life will be put to an end by the respondents. Fearing safety of his life the petitioner has moved his family bag and baggage to District Pratapgarh (U.P.). That the High Court of judicature at Allahabad are near to the place of residence of the petitioner and the petitioner feels that the writ Petition No. 727 of 2015 titled B.P. Mishra V/s U.O.I. be transferred to the High Court of Judicature at Allahabad as the petitioner has no trust and faith in the respondent and they can stoop to any level and the petitioner fears for his life.

VI. Because in the facts and circumstances stated above, it would be in the interest of justice that the said Civil Writ Petition No. 727/2002 filed by the petitioner against the respondents pending in the High court of Delhi at New Delhi be transferred to High Court of Judicature at Allahabad (U.P.). Even otherwise there is no likelihood of disposal of writ petition No. 727/2015 due to heavy back log of cases. The copy of the civil writ petition No.727 / 2015 is Annexure P-1.

4. That the petitioner has not filed any other similar transfer petition before this Hon'ble Court so far in respect of this matter.

PRAYER

In view of the above facts and circumstances, it is respectfully submitted that this Hon'ble Court may be pleased:

a) To pass order for transfer of the Civil Writ Petition No. 727/2015 filed by the Petitioner against the respondent titled "JWO BP Mishra Vs. Union of India" from High Court Delhi at New Delhi to the High Court of Judicature at Allahabad.

b) Any other and further order as may be deemed fit and proper may also be passed.

FILED BY:

DATE OF DRAWN _____

DATE OF FILING

NEW DELHI

ADVOCATE FOR THE PETITIONER

[**NOTE** : To be supported by an affidavit]

EXECUTION APPLICATION
IN THE COURT OF _____
EXECUTION PETITION OF ____ OF 2017
IN
CIVIL SUIT _____ OF 2015

A **DECREE HOLDER**
Versus
B **JUDGEMENT DEBTOR**

THE DECREE HOLDER PRAYS FOR EXECUTION OF THE DECREE/ORDER DATED DD/MM/YYYY, THE PARTICULARS WHEREOF ARE STATED IN THE COLUMNS HEREUNDER:-

Police Station:-

1.	No. of Suit	
2.	Name of Parties	
3.	Date of Decree/order of which execution is sought	
4.	Whether an appeal was filed against the decree / order under execution	
5.	Whether any payment has been received towards satisfaction of decree-order	
6.	Whether any application was made previous to this and if so their dates and results	
7.	Amount of suit along with interest as per decree or any other relief granted by the decree	
8.	Amount of costs if allowed by Court	
9.	Against whom execution is sought	
10	In what manner court's assistance is sought	

The Decree Holder prays that the execution of the decree passed in the case may be granted

Decree Holder

Verification

I, _____ S/o _____ R/o _____ do hereby verify that the contents of this application are true to my knowledge or belief.

Decree Holder

Through

Advocate of Decree Holder

** The application for execution shall be accompanied by a duly certified copy of the decree or order, or by the Original, or by the Minutes of decree or order until the decree or order is drawn up. Judge may allow execution before sealing of decree or order:*